Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling: Lawfulness of Incumbent Local Exchange Carrier Wireless Termination Tariffs	)	CC Docket No. 01-92

To: The Commission

COMMENTS OF TRITON PCS LICENSE COMPANY, L.L.C.

Triton PCS License Company, L.L.C. ("Triton"), by its attorneys, hereby submits its comments on the CMRS Petitioners' Petition for Declaratory Ruling in the above-referenced proceeding.[1] As described in the CMRS Petition, certain small incumbent local exchange carriers ("ILECs") have filed wireless termination tariffs requiring compensation for terminating mobile-to-land traffic. Such tariffs represent a blatant attempt to circumvent the ILECs' obligations to engage in good faith negotiations for interconnection and reciprocal compensation The CMRS Petition asks the Commission to direct the withdrawal of any such tariffs or, alternatively, to declare such tariffs unlawful, void and of no effect. Triton supports the CMRS Petition and urges the Commission to grant it forthwith.

Triton is a regional provider of digital wireless service in the Southeast United States, serving over 775,000 customers. Triton provides service to an area with 13.6 million people in

[1] T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners (the "CMRS Petitioners"), Petition for Declaratory Ruling: Lawfulness of Incumbent Local Exchange Carrier Wireless Termination Tariffs, filed September 6, 2002 (the "CMRS Petition"). The Commission requested comments by a public notice issued on September 30, 2002. Public Notice, "Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic," DA 02-2436 (rel. Sept. 30, 2002).

Virginia, North and South Carolina, northern Georgia, northeastern Tennessee and southeastern Kentucky. Much of Triton's territory is in rural areas served by rural ILECs. Consequently, Triton has significant concerns about the potential effect of ILEC reciprocal compensation tariffs on its business.

I. The Commission Has the Authority to Grant the CMRS Petition

The Commission has ample authority under the Communications Act of 1934, as amended (the "Communications Act"), to grant the CMRS Petition. Indeed, the Commission's authority in this area flows from multiple sections of the Communications Act and long-established Commission precedent. As noted by the CMRS Petitioners, Section 332(c)(1) of the Communications Act requires the Commission to act on petitions concerning interconnection issues raised by commercial mobile service providers:

> Upon reasonable request of any person providing commercial mobile service, the Commission *shall* order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this title?

The CMRS Petitioners also correctly note that the Commission itself has repeatedly affirmed that the statute requires Commission action on such petitions.[3] Section 201 of the Communications Act imposes a duty on every common carrier to furnish its services upon reasonable request![4] Even before the enactment of Section 332(c)(1)(B), the Commission held that Section 201 of the Communications Act provides the Commission "plenary jurisdiction to require cellular interconnection negotiations to be conducted in good faith."[5] Consequently, Section 332(c)(1),

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[2] 47 U.S.C. § 332(c)(1)(B)(emphasis added).

[3] *See* CMRS Petition at nn. 28-32 and accompanying text.

[4] 47 U.S.C. §201(a).

[5] The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, *Memorandum Opinion and Order on Recon.*, 4 FCC Rcd 2369,2371 (1989).

in tandem with Section 201, empowers the Commission to compel ILECs to engage in good faith negotiations for interconnection on just and reasonable terms – a result the ILECs seek to avoid by filing unilateral interconnection tariffs.

In addition, Section 251(b)(5) of the Communications Act provides that all LECs have the duty to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[6] Section 251(c)(1) imposes a further duty on ILECs to "negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements" for such reciprocal compensation.' The Commission emphasized these duties in Section 51.301(a) of the Commission's rules: "An incumbent LEC shall negotiate in good faith the terms and conditions of agreements to fulfill the duties established by Sections 251(b) and (c) of the Act."' Thus, the Commission has clear authority to order ILECs to engage in good faith negotiations pursuant to Section 251 of the Communications Act and Section 51.301 of the Commission's rules and forbid the circumvention of these duties through the use of state tariffs to impose unilateral – and non-reciprocal – conditions on interconnection.

11. Unilateral Tariffs **on CMRS** Traffic Termination **Do** Not Serve the **Public** Interest

Allowing ILECs to file and enforce unilateral tariffs for the termination of mobile-to-land traffic invites ILECs to ignore their duties to negotiate in good faith for interconnection and reciprocal compensation. If an ILEC can dictate the terms, conditions and rates for CMRS traffic termination by filing an enforceable tariff, it has absolutely no motivation to negotiate with CMRS providers, and CMRS providers would have little leverage with which to bargain.

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[6] 47 U.S.C. §251(b)(5).

[7] 47 U.S.C. §251(c)(1).

[8] 47 C.F.R. §51.301(a) (2001).

Thus, the terms, conditions and rates dictated by the ILECs are likely to impose unlawful and unreasonable costs on CMRS providers. This inevitably would result in higher costs and fewer choices to consumers as the costs of providing service raise in response to such tariffs.

Given the clear advantages that ILECs would derive from imposing unilateral tariffs instead of submitting to good faith negotiations, it is not surprising that ILECs would attempt to impose such tariffs. Unfortunately for such ILECs, this tactic was attempted and deemed unlawful fifteen years ago. As noted in the CMRS Petition, the Commission faced the exact issue presented by the unilateral filing of state interconnection tariffs and held that such tariffs may be filed "*only after* co-carriers have negotiated agreements in good faith."[9] The Commission recognized that "if a telephone company is able to file tariffs before reaching an interconnection agreement, a cellular carrier's bargaining power will be diminished."[10] The direct result of such diminution would be a drastic increase in rates to CMRS providers (and, ultimately, CMRS consumers) as ILECs would be free to impose whatever charges they deem fit – effectively capturing monopoly rents in the form of interconnection fees.

In addition, Section 251(b)(5) of the Communications Act provides that all LECs have the duty to "establish reciprocal compensation arrangements." The obligation to establish such arrangements extends to CMRS providers. In the 1996 *Local Competition Order*, the Commission plainly stated:

> [A]ll local exchange carriers, including small incumbent LECs and small entities offering competitive local exchange services, have a duty to establish reciprocal compensation arrangements for the transport and termination of local exchange

[9] The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, *Declaratory Ruling*, 2 FCC Rcd 2910,2916 (1987) (emphasis added). ***See*** CMRS Petition at 8.

[10] The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, *Memorandum Opinion and Order on Recon.*, 4 FCC Rcd 2369,2370 (1989).

> service. CMRS providers, including small entities, and LECs, including small incumbent LECs and small entity competitive LECs, will receive reciprocal compensation for terminating certain traffic that originates on the networks of other carriers, and will pay such compensation for certain traffic that they transmit and terminate to other carriers. We believe that these arrangements should benefit all carriers, including small incumbent LECs and small entities, because it will facilitate competitive entry into new markets while ensuring reasonable compensation for the additional costs incurred in terminating traffic that originates on other carriers' networks."

Of course, a key element of these reciprocal compensation arrangements is actual reciprocity of obligations. Under a tariff arrangement, however, the obligation to pay compensation for traffic termination generally flows in just one direction – towards the ILEC. While this may be desirable for the ILECs, it violates the mandates of both Congress and the Commission that ILECs establish *reciprocal* compensation arrangements. In the meantime, the imposition and enforcement of such tariff arrangements would deprive the public of the benefits that result from reciprocal compensation arrangements, namely competitive and affordable wireless service.

The tariff process itself also would impose heavy burdens on CMRS providers if the use of wireless termination tariffs became widespread. Carriers that file tariffs generally are under no obligation to provide actual notice to users of tariffed services. Thus, to keep track of its reciprocal compensation obligations in a tariffed environment, a CMRS provider would have to monitor the tariff filings of every LEC everywhere it serves. For nationwide providers such as Sprint or Nextel, this would mean monitoring all ILEC tariff filings in every state. Even smaller, regional providers would find themselves overwhelmed by the task of obtaining and analyzing

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[11] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnections between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd 15499, 16018 (1996) (*"Local Competition Order"*).

applicable tariff filings. Triton, for instance, provides service in Virginia, North and South Carolina, northern Georgia, northeastern Tennessee and southeastern Kentucky. Approximately 90 ILECs provide service to these areas. In a tariff-based interconnection environment, Triton would be forced to monitor, and potentially respond to, filings by each of these carriers.

A CMRS provider's need to monitor wireless termination tariffs, however, would not stop at the borders of the provider's service areas. CMRS providers would inevitably face obligations from *all* in-state wireless termination tariffs, not just the tariffs covering the regional provider's service area. Triton's network covers much of North Carolina, for example, but does not directly provide service to such areas as Durham, North Carolina. Triton nevertheless would find itself subject to a tariff filed by a Durham-area ILEC if a wireless customer in Wilmington, North Carolina (which is served by Triton's network), placed a call terminating on the Durham-area ILEC's network.[12] Obligating Triton and other CMRS providers to chase every tariff filing in every state in which they offer service can only distract attention and resources away from more pressing matters, such as providing expanded coverage and improved service, with no countervailing benefit to the public.

The costs of ILEC reciprocal compensation tariffs might be small individually, but in the aggregate they likely would impose significant economic burdens on CMRS providers. CMRS providers cannot afford to ignore invoices from ILECs because they cannot run the risk of having interconnection cut off, which would limit the service available to CMRS customers. At the same time, because the charges from any given ILEC are likely to be small, the costs of

[12] In fact, it appears that some carriers are charging reciprocal compensation based on the telephone number making the call, not the carrier from which the call is received. This imposition of reciprocal compensation charges on roaming customers potentially means that a regional carrier like Triton could have to monitor interconnection tariffs nationwide.

challenging a specific ILEC tariff (or of negotiating an interconnection agreement with a small ILEC) would far exceed any likely benefit. Indeed, because the cost of addressing an ILEC reciprocal compensation tariff almost always will exceed the cost of simply paying, ILECs will have increasing incentives to impose such tariffs and to charge higher and higher rates.

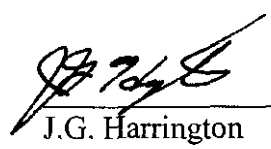
These issues are not theoretical. Triton already is receiving invoices from at least one carrier that apparently are based on an interconnection tariff. As described above, the charges are not high enough that it makes economic sense to challenge that single tariff, and likely never will be. If such tariffs became common, however, the ongoing cost burden on Triton would be significant. Moreover, because the tariffs are unilateral, Triton would be unable to recover its costs of terminating calls from the ILECs that impose tariff-based interconnection charges. As a result of this combination of increased costs and foregone revenues, Triton's charges to its customers inevitably would be higher than they would be in a true reciprocal compensation regime. This combination of unreasonable burdens on Triton and unavoidable increases in consumer costs further demonstrates that unilateral ILEC reciprocal compensation tariffs cannot be in the public interest.

III. Conclusion

The filing of unilateral tariffs for the termination of CMRS traffic represents nothing more or less than an effort to avoid good faith negotiations with CMRS providers. Just as the Commission repudiated such efforts in the past, the Commission has the authority and obligation to do so now. For all of these reasons, Triton respectfully requests that the Commission grant the CMRS Petition and either direct the withdrawal of any such tariffs or, alternatively, to declare such tariffs unlawful. void and of no effect

Respectfully submitted,

TRITON PCS LICENSE COMPANY. L.L.C.



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CERTIFICATE OF SERVICE

I, Tammi **A.** Foxwell, **a** secretary at the law firm of Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 18th day of October, 2002, I caused a copy **of** the foregoing Comments to be served bv first-class mail, postage prepaid, except where indicated, to the following:

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